

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

September 26, 2008

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No: 04HD-183

HAWAII

Rescind Prior Board Action of October 8, 2004, Item D-15,  
Sale of Remnant (Flume Right-of-Way) to the Fitzgerald  
Family Trust at Kaiwiki, South Hilo, Hawaii, Tax Map Key:  
3<sup>rd</sup>/ 2-9-04: Portion of Abandoned Flume Right-of-Way

BACKGROUND:

At its meeting of October 8, 2004, Item D-15, the Board of Land and Natural Resources approved the sale of remnant (flume right-of-way) to the Fitzgerald Family Trust. (EXHIBIT A) Purpose of purchasing the remnant was to allow the Fitzgerald Family Trust to include the remnant in a consolidation and resubdivision of the Trust's property with the property of their neighbors (the Sawreys) to reconfigure their lot lines.

REMARKS:

In the processing of the request, Mr. John Fitzgerald, Trustee of the Fitzgerald Family Trust refused to provide the appraisal fee (\$1,500) necessary to obtain an independent appraiser for determining the value of the remnant. Mr. Fitzgerald further indicated that the Trust would not be willing to pay any consideration amount over the estimated \$145 county assessed value. The county Real Property Tax Assessment of abutting properties indicated that the fair market value for a plot of equivalent size to the remnant was anticipated/ estimated to be around \$7,521.

On February 21, 2007, HDLO received a copy of a letter from Mr. Fitzgerald to the County of Hawaii Planning Department, requesting to cancel their application for lot consolidation. The Sawreys sold the abutting property and the Trust no longer has an interest to acquire the abandoned flume right-of-way.

Due to a change in landownership of the lands abutting the flume right-of-way, and the loss of interest by the Fitzgerald Family

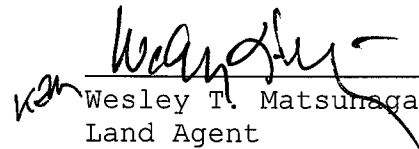
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Trust to purchase the remnant, staff is recommending that the prior board action of October 8, 2004 be rescinded.

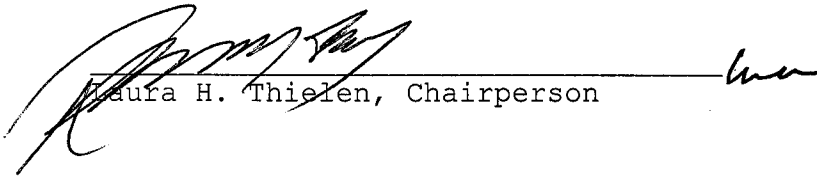
RECOMMENDATION: That the Board:

1. Rescind its prior Board action of October 8, 2004, under Agenda Item D-15.

Respectfully Submitted,

  
Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
Laura H. Thielen, Chairperson

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 8, 2004

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 04HD-183

HAWAII

Sale of Remnant (Flume ROW) to John C. Fitzgerald II and Karen Teresa Fitzgerald, Trustees of the Fitzgerald Family Trust, Kaiwika, South Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/2-9-04: por. abandoned Flume Right-of-Way.

APPLICANT:

John C. Fitzgerald II and Karen Teresa Fitzgerald, Trustees of the Fitzgerald Family Trust dated January 22, 2001, whose mailing address is P. O. Box 382, Makawao, Hawaii 96768.

LEGAL REFERENCE:

Section 171-52, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaiwika Homesteads situated at Kaiwika, South Hilo, Hawaii, identified by Tax Map Key: 3<sup>rd</sup>/2-9-04: portion of Flume Right-of-way, as shown on the attached map labeled Exhibit A.

AREA:

.346 acres, more or less.

ZONING:

State Land Use District: Agriculture  
County of Hawaii CZO: Ag-20A

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON  
*October 8, 2004*

ITEM D-15

**EXHIBIT A**

Fitzgerald-Kaiwiki Flume  
TMK: 3<sup>rd</sup>/ 2-9-04: por. abandoned Flume

Page 2

October 8, 2004

CURRENT USE STATUS:

Vacant and unencumbered.

CONSIDERATION:

One-time lump sum payment of fair market value to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Not applicable. Subject lands are to be conveyed to abutting landowner(s) and will become privately owned land at that point. Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.

DCCA VERIFICATION:

Not applicable. Grantee is a Trust and not required to register with the DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1. Pay for an appraisal to determine the one-time payment of fair market value for the remnant;
2. Consolidate the remnant with the Applicant's abutting property through the County subdivision process;
3. Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost;

REMARKS:

Pursuant to section 171-52, HRS, a remnant is defined as "a parcel of land economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics." The subject parcel has been determined to be a remnant by this definition for the following reasons:

Subject parcel is an abandoned 10-foot wide flume right-of-way.

On November 9, 1932, a public auction was held for a Land License identified as General Lease No. 2301. The Hakalau Plantation Company, as the highest bidder, was issued a 21-year land license, which commenced on November 9, 1932. The proposed use of the license was for the rights, privilege and authority to enter Government lands of Halakau, for utilizing rights-of-ways 10-feet wide for roads and flume purposes. Upon expiration of General Lease No. 2301, the Hakalau Plantation Company requested and was granted a Revocable Permit (No. 1253), for similar purposes. There are no documents on file to indicate when Revocable

**EXHIBIT A**

Permit No. 1253 terminated or when the flume right-of-way was abandoned.

Staff has confirmed that John and Karen Fitzgerald, as Trustees of the Fitzgerald Family Trust, are the owners of parcel 27 of Tax Map Key: (3) 2-9-04: by Warranty Deed, recorded on March 12, 2004 with the Bureau of Conveyances, under Document No. 2004-051123. The subject flume right-of-way abuts only one other private property, identified as Tax Map Key: 3<sup>rd</sup>/ 2-9-04: 57, belonging to Greg and Gloria Sawrey. Mr. & Mrs. Sawrey has indicated in writing that they have no interest in purchasing those portions of the flume right-of-way abutting their property. As a result, the sale of the subject abandoned flume right-of-way is being offered only to the Fitzgerald Family Trust. The Fitzgeralds have a pending application with the County Planning Department for preliminary subdivision/consolidation of the subject flume right-of-way with their private property.

John C. Fitzgerald II and Karen Teresa Fitzgerald, as Grantees, has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments. To date, all respondents indicated that they had no objections to the sale of the remnant.

| AGENCIES                                | COMMENTS                |
|---|-------------------------|
| <b>County of Hawaii:</b>                |                         |
| Planning                                | No comments/ objections |
| Public Works                            | No comments             |
| Water Supply                            | No objections           |
| <b>State of Hawaii:</b>                 |                         |
| DHHL                                    | No response             |
| DLNR-Aquatic Resources                  | No objections           |
| DLNR-Historic Preservation              | No response             |
| DLNR-Na Ala Hele Trails                 | No comments             |
| DLNR-State Parks                        | No objections           |
| <b>Other Agencies/ Interest Groups:</b> |                         |
| Office of Hawaiian Affairs              | No objections           |
|   |                         |

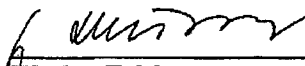
**RECOMMENDATION:** That the Board:

1. Find that the subject lands are economically or physically unsuitable or undesirable for development or utilization as a separate unit by reason of location, size, shape, or other characteristics and, therefore, by definition is a remnant pursuant to Chapter 171, HRS.


**EXHIBIT A**

2. Declare that, the proposed disposition does not require an environmental assessment as provided by Chapter 343, HRS, and Chapter 11-200, HAR. That the subject lands are to be conveyed to abutting landowner(s) and will become privately owned, therefore, Chapter 343, HRS, would not apply to any future development on the parcel, as no State lands would be involved.
3. Authorize the consolidation of the subject remnant by the Applicant.
4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the sale of the subject remnant to John C. Fitzgerald II and Karen Teresa Fitzgerald, Trustees of the Fitzgerald Family Trust, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current deed or grant (remnant) form, as may be amended from time to time;
  - B. Review and approval by the Department of the Attorney General; and
  - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

  
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Wesley T. Matsunaga  
Land Agent

APPROVED FOR SUBMITTAL:

  
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Peter T. Young, Chairperson

**EXHIBIT A**

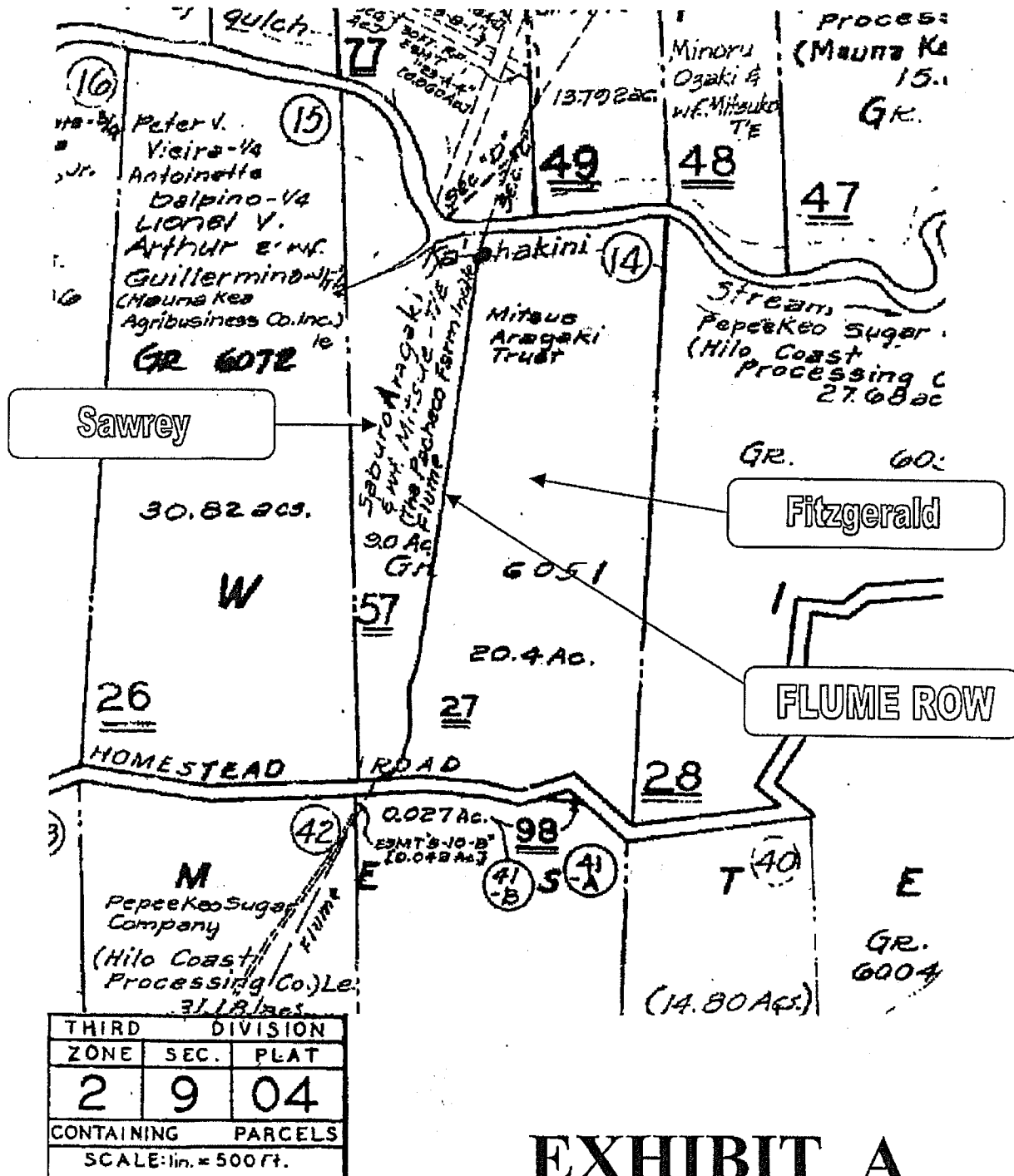


EXHIBIT A